

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 510 OF 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DY. DISTRICT DEVELOPMENT OFFICER & ANR. - Petitioner(s)**Versus****YAKUBKHAN IBRAHIMBHAI PATHAN - Respondent(s)**

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Appearance :

Shri H.S. Munshaw for Petitioner(s) : 1 - 2.

Shri Dipak R. Dave for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 21/08/2007****ORAL JUDGMENT**

The petitioners, being aggrieved by the award dated 14th
September, 1998 passed by the learned Labour Court, Godhra in

Reference (LCG) No.382 of 1992, is before this Court under Article 227 of the Constitution of India with a submission that the learned Court below was unjustified in answering the reference in favour of the workman.

2. Shri H.S. Munshaw, learned Counsel for the petitioners, submitted that the workman was appointed on *ad hoc* and temporary basis to carry out the Mid Day Meal Programme sponsored by the State Government. The post was created by the State Government and after abolition of the post and closure of the Mid Day Meal Programme, the services of the workman were not required, therefore, he was removed. He submitted that in view of the facts floating on the surface of the record, the order of reinstatement could not be made.

3. Shri Dipak R. Dave, learned Counsel for the respondent, on the other hand, submitted that the appointment of the respondent was not conditional. As the services were not made co-terminus with the closure of the programme and as he was appointed by the petitioners, he would be taken to be an employee of the petitioners. His further submission is that even if the amount of salary/wages paid to the workman was funded or provided by the State Government to the petitioners, it would be an internal matter between the petitioners and the State.

4. It is not in dispute before me that the order of appointment, which could show that the appointment was to be coterminus with the closure of the programme, was never made. It has also not come on the record from the side of the petitioners that the workman was employed by the State government or the State Government only was to be held responsible in case of removal.

5. In absence of such evidence from the side of the petitioners, it is to be held that the respondent-workman was appointed by the petitioners and the wages were also to be paid by the petitioners. It has come on the record that the workman had worked continuously for a period of 3 to 4 years and no notice or retrenchment money was paid to him under Section 25-F of the Industrial Disputes Act, 1947.

6. If that be so, removal of the workman would tantamount to illegal retrenchment and such an order of removal cannot be allowed to stand.

7. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**